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In the

Supreme Court of the United States

OCTOBER TERM, 1953

No. 378

PAUL C. FISHER, d/b/a FISHER PEN COMPANY,
Petitioner-Defendant,

v.

JAMES P. MITCHELL, Secretary of Labor,
Respondent.

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF

PAUL C. FISHER,
Petitioner, pro se,
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To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The defendant, Paul C. Fisher, again asks that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on June 17, 1953, affirming a judgment of the United States District Court for the Northern District of Illinois, Eastern Division, dated September 18, 1952.

CERTIFICATE OF GOOD FAITH

I, hereby, certify to the Court that this petition is presented in good faith upon other substantial grounds available to me, although, not previously presented and that it is not presented, primarily, for delay.

PAUL C. FISHER, *pro se.*

NATURE OF THE CASE

This is a case in which an individual is trying to help preserve the integrity of our Government by making a stand against an unconstitutional, unreasonable attempted search of private records without any showing whatsoever of probable cause by the United States Department of Labor as required by the Fourth Amendment.

In this case the petitioner-defendant, an individual, has been convicted of contempt of court for failure to comply with a Federal District Court Order (issued without any showing of "probable cause") demanding that his PRIVATE records be turned over to the U. S. Department of Labor for search by officials of that department.

SUPREME COURT RULE UNDER WHICH THIS PETITION FOR REHEARING IS FILED

Rule 33 of the *Supreme Court of the United States (Revised)*, as amended October 13, 1947.

SUBSTANTIAL OTHER REASONS FOR THE ALLOWANCE OF THIS WRIT

The integrity and the honesty of the Federal Court as well as the Bill of Rights are on trial in this case. The preservation of that integrity requires that the Courts re-examine this case and determine specifically how and if the Fourth Amendment applies to the issues here.

The legal power of all branches of the United States Government originate with the Constitution of the United States. The power and legal authority of the Federal Courts are derived from that Constitution which is the very foundation of our Government. The men who wrote and adopted that Constitution recognized that this foundation must be defended and protected if our Government and our People were to prosper and remain strong. Accordingly they required that all Federal Judges before taking office, first take an oath to support and defend that Constitution.

That oath of office reads:

> "I do solemnly swear that I will support and defend the Constitution of the United States against *all* enemies, foreign and domestic, that I will bear true faith and allegiance to the same, that I take this obligation freely, without any mental reservation or purpose of evasion and that I will well and faithfully discharge the duties of the office on which I am about to enter so help me God."

To comply with this oath is the primary duty of the Federal Courts. To violate this oath or to fail to support and defend that Constitution will destroy the integrity of

our Courts and in time, the defendant believes, will destroy the Government of the United States.

The Undisputed Facts

This is a simple case, the facts have been established and are not contested.

1. The Federal District Court issued an order (subpoena duces tecum) demanding that the defendant produce his private records for search by the United States Department of Labor.

2. The order was issued without any showing whatsoever of probable cause supported by oath or affirmation as required by the Fourth Amendment.

3. There is no charge or complaint of any kind against the defendant that he has violated a law or rendered an injustice.

4. No reason for the attempted search has been given except as a presumed prerogative given to the Labor Department by the Wage and Hour Law of 1938.

5. The Fourth Amendment reads:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourth Amendment states that the right of the people to be free from unreasonable search shall not be violated.

The Fourth Amendment also states that an unreasonable search is one which is not made "upon probable cause supported by oath or affirmation."

In this case, the District Court's order to produce private records constitutes a forced search and was issued without "probable cause supported by oath or affirmation." This fact is uncontested. See the opinion of the Circuit Court. (R. 71.)

Therefore the District Court's order was issued in violation of the Fourth Amendment of the Bill of Rights and is unconstitutional, null and void.

The attorneys for the Labor Department have argued that the Court's order was not a warrant and so did not require "probable cause."

What kind of legal trickery and double talk is this? Would they wish away the legal protection of the Fourth Amendment by distorting the meaning of the word, warrant, as it was used by the men who wrote that Bill of Rights? Would they nullify our laws with a gimmick?

The meaning of the word, warrant, was correctly defined by the defendant on page 13 of his original Petition for Writ of Certiorari. This definition has not been challenged nor can it be honestly challenged.

Who can honestly deny that the Fourth Amendment was intended to prohibit unreasonable searches and that the existence of "probable cause supported by oath or affirmation" is the intended requirement for reasonableness?

To allow searches without just reason or without probable cause simply by changing the method from forced seizure to one of compelling the victim to produce the records against his will or suffer imprisonment defeats completely the intent and the spirit and the letter of the law.

A Constitutional Question

This is a constitutional question—basic and fundamental —and the integrity of the Courts (who are pledged to uphold that Constitution) requires that the Courts face this issue frankly and honestly.

Both the District Court (R. 47-50) and the Circuit Court of Appeals (R. 68-71) failed to consider the language of the Fourth Amendment as it applies to the issues here.

The defendant, in good faith, in his Petition for Rehearing to the Circuit Court of Appeals (R. 75-84) asked that Court to explain, if it could, how the Court's action could be reconciled with its oath of office and the Fourth Amendment. The Court of Appeals for the Seventh Circuit ignored the defendant's questions and in effect condemned the defendant to jail, without even an effort to explain its decision in which it had ignored and failed to consider the language of the Fourth Amendment.

Were the defendant's questions ignored because they were embarrassing—because the Court can not honestly explain its decision?

The Defendant's Charge

The defendant feels that this case proves that the particular judges who ruled here have failed to accurately,

literally and honestly interpret and enforce our basic law, the Constitution of the United States.

If such is the case then the preservation of the integrity and reputation of our Federal Court System as well as our Bill of Rights, demands that this case be heard by the Supreme Court in order that the defendant's questions may be answered.

Involves Basic Philosophy of Government

This is a situation which involves the basic philosophy of government. The importance and the significance of a decision in this case goes far beyond the importance of the individuals or the circumstances immediately involved.

A correct decision, here, requires a proper understanding of fundamentals. The defendant believes that a re-examination of those fundamentals at this time is both pertinent and required in order to explain and defend his position. For that reason, in the following few pages, he will try to outline briefly for the Court the fundamental philosophy which lies behind the facts and superficial points of disagreement.

It makes little difference whether or not the defendant in this case goes to jail. The defendant does not have a martyr complex and has no intention of remaining in jail to his own detriment. On the other hand, the defendant believes that his books and records are in good condition and that he has carefully complied with the Wage and Hour law so that he has nothing to fear from a Labor

Department search of either his PRIVATE RECORDS or the particular records required to be kept by law.

The Defendant's Stand Not Based on Fear

The defendant in this case has not made this stand in defense of the Fourth Amendment because of fear nor has he made it because of any antagonism or feeling of disrespect for the Labor Department or the Courts. He has made it in an effort to render a public service by helping to clarify our thinking and our understanding of the true function of government.

When the defendant first became involved in this defense of the Fourth Amendment, his legal advisors told him that he could not win this case. He was told that the Courts by interpretation had so altered the original intent of the Fourth Amendment that his arguments would be considered frivolous and his efforts would be completely wasted.

Courts Generally Are Objective and Impartial

Since that time, he has read many decisions by the higher Courts. It is true that all judges are human beings and all human beings are subject to error, but from his studies he has learned to respect the opinions of the Courts. He frankly, has been amazed at the objectivity and impartiality with which justice is administered. He has found little to object to in the decisions which he has read, but instead has found much to confirm his own convictions and to support the position he has taken here.

He is proud to be an American and to have the opportunity to make his own defense. He chose to defend himself pro se, for two reasons: 1. He wanted to present his own arguments in his own way and to explain his position in his own words. 2. By defending himself he helped to minimize the expense involved and to preserve his limited financial position.

However, he has had much advice and much help in the preparation of his defense by men who have far more experience and much greater knowledge at law than he possesses. To these men, who have so generously helped him in his efforts, he is deeply grateful.

An Experiment in Disobedience?

By inference, the Respondent called the defendant's efforts to defend the Fourth Amendment 'an experiment in disobedience.' In defense of his stand, he will try to explain to the Court very briefly why he is conducting this experiment. For a number of years he has watched with concern the growing centralization of power in this country. First it was economic power in the hands of big business and, now, more recently, it is the centralization of political power in the hands of big government. Unlimited power is a dangerous thing for a human being to hold whether he be a business man or an official of the Government, because power can be used to protect one from accountability. Man by his very nature is frail and subject to error and so too much power in time will corrupt the finest of men. The rest of us are corrupted more quickly.

Another Experiment in Disobedience

The men who were responsible for another experiment in disobedience, the American Revolution, understood these facts and so in writing the Constitution of the United States they designed a new form of Government—a Government with many limitations upon its power. The Fourth Amendment is one of those limitations. The power of this Court, in which this defendant is today allowed to make his plea, is another one of the limitations put upon the executive branch of our Government.

Two Views of Government

There are two general views as to the proper function of Government. The first view is that which was held by the men who wrote the Declaration of Independence and later the Constitution of the United States. These men looked at Government as a sort of umpire whose rightful function was to maintain peace and order—to guarantee the maximum amount of individual freedom by protecting us from taking unfair advantage of each other. These men believed that Government should not be allowed to meddle into private affairs without a just reason or "probable cause."

The other view of Government is the totalitarian view in which it is held that, due to the complications of modern society it is necessary for Government to come in and regulate our entire economic system. This view is incompatible with individual liberty and the defendant believes that it is also incompatible with the Bill of Rights, among which is the Fourth Amendment.

The War of Ideas

The real war in the world today is the war between these two different views and we might add that the totalitarian view is having its round of victories. In one country after another individual liberty has gone by the wayside before the onrush of totalitarianism. But this is a war of ideas—a battle for the minds and the hearts of men.

The Most Powerful Weapon

We Americans who believe in individual freedom seem to have forgotten that the most powerful weapon of all is the power of conviction and repetition. And so the forces of totalitarianism have grown stronger as our belief in freedom has grown weaker.

At times in our efforts for expediency we seem to forget the wisdom which our forefathers have passed down to us.

We Have Not All Forgotten

We should be disturbed by some of the things we see happening to our own Government. As we fight tyranny abroad, we seem to be losing our Freedoms at home. We are told that these Freedoms must be given up in order for us to fight more efficiently the foreign threats of oppression. We wonder at times if we have forgotten that Freedom is also a tremendous weapon which can conquer the minds of men and move them to great effort and great sacrifice. But we have not all forgotten. A short time ago we read a

little book, "The Key to Peace," by Clarence Manion. It had a tremendous impact upon our thinking and we believe will have the same impact upon the thinking of millions of other Americans.

The defendant is making this gesture against the superior odds of the Department of Labor because he hopes to demonstrate that we Americans can use our great heritage of Freedom and individual rights as a weapon against the enemies of Freedom who are confounding and confusing the World.

The Disobedience Here Is by United States Department of Labor

In another sense it is not the defendant who is conducting the experiment in disobedience at all. Because he believes that his actions are in conformity to the laws of our land. The disobedience here is being perpetrated by the Department of Labor in their efforts to deprive the defendant of his rights under the Fourth Amendment.

The Declaration of Independence states that: "All men are endowed by their Creator with certain unalienable Rights * * *." One of these rights, we believe, is our right to agree or disagree—to obey or disobey laws in contravention of our fundamental law—the Constitution.

I Have Chosen the Punishment

The officials of the Labor Department can try to punish the defendant and take this action against him in Court. If they succeed, he must obey or accept the punishment. He has chosen and will choose to accept the punishment be-

cause he believes that those officials are misusing their power and that his conviction in this will eventually win a victory in the cause of Freedom.

On Threshold of New Renaissance

The defendant believes that the World is on the threshold of a new renaissance—an awaking far more important than that which came 400 years ago. (R. 22.) This new day which is about to dawn will come when men learn to apply the scientific technique to the social sciences which include: Government, and Law.

Prior to four hundred years ago, man lived in what we now call the dark ages. He believed that the world was flat and that if you sailed far enough out beyond the horizon that you would either be devoured by a dragon or you would fall off the end of the earth and be destroyed. In the physical sciences man was quite ignorant. There was no science then of electronics, and no real science of chemistry or physics. Man's tools were still crude and his understanding of nature very limited.

Then something happened. Copernicus discovered the planets. Galileo invented the telescope and Columbus staked his life upon a theory that the world was round. That was the beginning—the dawn of the scientific age. Man had learned how to apply the scientific technique to the physical sciences. From that new technique has come the wonders of radio, television, jet planes and atomic bombs. These wonders prove the power of the human mind and man's ability to unravel the physical mysteries of nature.

In Government and Law We Still Live in the Dark Ages

However, our progress in the social sciences has not been so great. In government we are not far removed from the Romans or the Greeks. War still rages, periodically, throughout the World and there is no common agreement as to what is right and what is wrong.

In fact the World stands as never before on the brink of disaster—an atomic war with possible devastation beyond comprehension. Today—we still live in the Dark Ages in so far as the social sciences are concerned. We are like a small child playing with a stick of dynamite. We have put our hands on great destructive power and we don't know how to control either ourselves or this great new instrument of destruction.

In the physical sciences the scientific technique created a great area of common agreement among the scientists. The chemists now agree that water is composed of H^2O—that is two atoms of hydrogen and one atom of oxygen per molecule. It is no longer a debatable theory but a proven and demonstrable fact which has been proven time and time again in the chemistry laboratory. Upon such demonstrated facts the structure and progress of modern science has grown and is still growing.

Social Sciences Are Infinitely More Complicated

Because the apparently intangible human element makes the social sciences infinitely more complicated than the physical sciences and perhaps because our emotions and prejudices lie more closely to our social problems, man has,

so far, failed to apply successfully the scientific technique to government and law.

The defendant believes that our prejudices and our preconceived notions as to what is right and wrong are largely responsible for our failure in the social sciences.

Strongest Drive Behind Human Action Is Desire for Confidence

One of the most powerful drives behind human action is the individual's desire for self-esteem, honor and self-respect. They are the keys to self-confidence which in turn is the key to mental efficiency and happiness. Confidence and self-esteem are so important to the individual that he loses his emotional equilibrium when they are destroyed. If you criticize a man (no matter how justly) in such a way as to undermine his self-confidence, he must fight against and endeavor to protect himself from the damage of your criticism just as if you had attacked his life, because he knows (even if you don't) that his happiness and efficiency are dependent upon his confidence.

Even the man on skid row still has his pride and with his rationalization has found an excuse for his plight. He, too, will fight to defend the props with which he supports his wounded ego.

We who have not yet hit skid-row also have our self-esteem and the props by which we support it. Our pet theories, prejudices and our habits of thought are often inseparateably interwoven with our self-esteem so that we

may reject a new idea or theory without reason other than our instinctive need to protect our confidence and self-esteem.

All Facts Come From Experience

Scientific progress came in the physical sciences as men learned that the facts could be proven by demonstration in the laboratory and that by clinging realistically to those facts and rejecting false prejudices great things could be accomplished.

Although powerful and wonderful, when used properly, the human imagination has been the stumbling block in the way of scientific progress. Men with their imaginations had decided that the World was flat and so they called Columbus crazy and deluded.

But Columbus had seen the ships sink below the horizon as they sailed away and he knew that the Earth was not flat. He had learned the facts from expericnce and so had rejected the theory that had hampered exploration for so many hundreds of years.

The human mind does not create facts, it only observes them and scientific progress comes as we learn to accept honestly and accurately the facts which experience teaches.

To become a scientist in any field, man must learn to so condition his mind that he is able to accept accurately the facts from experience and reject more easily the false theories which habit and the imagination have created.

Scientific Technique Requires Four Things

The defendant believes that this scientific technique requires four things:

1. *Desire to accomplish something.* The scientific technique can not be applied aimlessly. It can only be used for a definite purpose and the stronger the desire to accomplish that purpose the more likely is success.

2. *Faith or confidence.* We must have faith or confidence that the purpose can be accomplished. The human mind is so constructed that it can accomplish only those things it believes are possible. When faith breaks down, the efficiency of the human mind breaks down with the loss of faith.

3. *Trial and error.* The facts and wisdom come only from experience. True progress comes only through the lessons we learn by making mistakes or by studying the mistakes which others have made. Thomas Edison made 10,000 failures or mistakes before he was able to make the first successful electric lamp. We must not be afraid to make mistakes and to analyze them honestly if we expect to learn.

4. *Complete devotion to the accurate truth.* This is the most difficult of the four things required for the scientific technique and the defendant believes, the one place we have failed so far in our efforts to apply the scientific technique to government and law. We must make experiments, correctly analyze their success or failure and be willing to admit when we have been wrong. The accurate truth (and it must by all means be as accurate as possible) is not an

easy thing to find. It requires great self-discipline, courage and basic honesty. It is so easy to let one's emotions and ideals run away with one's imagination and thereby close one's mind to the realistic facts of life.

Utopian Philosophy Is False

For example, there is an unrealistic and unprovable philosophy abroad in the World today that it is possible to create a Utopian society in which all men will live in peace and harmony without conflict or disagreement. It is a beautiful theory and appeals to the basic instincts of man who longs for perfection and peace, but denies the basic facts of life that a realistic and honest view will demonstrate time and time again. On every front and in all phases of life we find conflict, eternal conflict in the basic struggle for survival. Since the beginning of time as far as we can tell, life has been perpetually one of battle: Man against man, man against disease, against nature, against animals and other forms of life against each other. This battle for survival can be observed in a drop of water as the microscopic organisms devour each other. It can be observed in the jungle and in the fields and in the oceans as each plant and each animal pits itself against its environment in an effort to survive. Nowhere on Earth has man ever found Utopia except for fleeting moments of quiet and peace before the inevitable returning storm of struggle.

This is one of the first demonstrable truths which the scientific technique will reveal if we apply it to the social sciences.

Requires Courage and Complete Devotion To the Accurate Truth

But it requires courage and complete devotion to the accurate truth for us to accept such a disallusioning fact. It has long been a fond hope of man that someday Heaven on Earth would be a reality. But realism and truthfulness demands that we accept God's World as it is and accept the fact that conflict and struggle are part of the necessary ingredients of progress. It can be observed that when competition ends, degeneration and deterioration begin.

Dr. William Wirt once said, "I owe most to my enemies because it is they who have kept me on my toes." So in this case the defendant does not resent this battle with the Labor Department and the Courts because he has learned much from this battle and he has no doubt that someday that Labor Department and those Courts will be better because of this fight against an individual with a different viewpoint.

World Today Is on Brink of Disaster

With the World today on the brink of atomic warfare, it is well to pause and examine some of our basic theories. We have been seeking peace by greater and greater centralization of power. It is the desire of some to bring peace to the World by uniting it into one big happy family of nations where all conflicts and disagreements will be arbitrated and liquidated by negotiation, and where all of the great powers of destruction will be concentrated in a few hands so as to be held over the heads of the rest of the World as a threat against those who disagree and wish to

continue the inevitable competitive battle for survival. This view in the defendant's opinion is the result of a lack of devotion to accuracy of observation and the facts of life. Under the laws of nature since the dawn of history, basic disagreements and conflicts have been solved by only one method and that is by physical force either used or threatened.

This Case Will Be Solved by Physical Force

Physical force is the method by which this case will eventually be solved and if the physical force at the command of the Labor Department overpowers the defendant, he shall comply docilely enough while he whispers, "But according to the Fourth Amendment which is the LAW, that here applies, probable cause is still required for all searches of private records. In time I shall take my case to the People who will support me and vindicate me and then our Fourth Amendment shall live again. If I am right and right enough, I shall not fail."

Atomic War Is NOT Inevitable

The defendant believes that atomic war and in fact all war between nations can be avoided by a realistic recognition of three basic facts of life:

1. Basic conflicts and struggles between people is inevitable.

2. Physical force or threat of force is the final arbiter of all basic differences.

3. Too much power inevitably corrupts and brings eventual destruction to all people who use that power to protect themselves from fair competition.

And so World Government and World Communism by the accumulation of too much power will inevitably bring about their own destruction and at the same time fail to bring peace. The decentralization of power and the return of the American Government to its rightful place as an umpire in man's struggle for survival may ease World tensions by accelerating competition between individuals and thereby decelerating competition between nations.

CONCLUSION

The Supreme Court of the United States has a chance in this case to strike a tremendous blow against the centralization of Governmental Power simply by upholding and accurately interpreting the Fourth Amendment. If the Government is prohibited from searching private records without first showing probable cause, much of its power will be curbed and the defendant believes that the American People and the World will be much the better for it.

In this case before rendering a final decision, the defendant asks that the Supreme Court examine its conscience and remember that a fundamental part of the scientific technique is honesty and accuracy. If the Court will do this, it will remember that its basic duty is to "support and defend the Constitution of the United States against *all* enemies, foreign and domestic."

Respectfully submitted,

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